

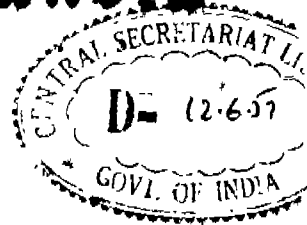
The Gazette of India



EXTRAORDINARY

PART II—Section 3

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No. 297] NEW DELHI, TUESDAY, JUNE 4, 1957/JYAISTHA 14, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 28th May, 1957

S.R.O. 1858.—In pursuance of the provisions of Su-section (1) of section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 439 of 1957 presented to the Commission on the 3rd May, 1957 under section 81 of the said Act, by Shri Kalipada Banerjee, 9-A, Mahim Halder Street, Calcutta and Shri Anil Kumar Sadhukhan, 30, Surendra Nath Banerjee Road, Calcutta, calling in question the election to the Legislative Assembly of the State of West Bengal from the Calcutta South-West constituency of that Assembly of Shri Biren Roy, 4, Sourin Roy Road, Behala, Calcutta—34.

Presented to me by *Shri Asoka Krishna Dutt* who has been duly authorised by the petitioners to present this petition and whose signature has been obtained in the margin and attested as having been signed before me this the *third day of May* one thousand nine hundred and fifty seven.

(Sd.) A. KRISHNASWAMY AYYANGAR,
3-5-57.

Secretary, Election Commission, India.

BEFORE THE ELECTION COMMISSION

ELECTION PETITION No. 439 OF 1957

1. Kalipada Banerjee, residing at 9A, Mahim Halder Street, Calcutta in the State of West Bengal.
2. Anil Kumar Sadhukhan, residing at 30, Surendra Nath Banerjee Road, Calcutta in the State of West Bengal.—*Petitioners.*

Versus

1. Biren Roy, residing at 4, Sourin Roy Road, Behala, Calcutta—34 in the suburbs of the town of Calcutta.
2. Ashim Krishna Dutt, residing at 22A, Loudon Street, Calcutta—16.
3. Rajani Mukherjee, residing at 139B, Rash Behari Avenue, Calcutta—29.
—*Respondents.*

(1869)

The humble petition of the petitioners abovenamed most Respectfully Sheweth:—

1. At all material times your petitioners were and still are citizens of India and were and still are residents of Calcutta, their actual places of residence being as follows:—

Name	Place of Residence
1. Kalipada Banerjee	9 A, Mahim Halder Street, Calcutta.
2. Anil Kumar Sadbhukhan	30, Surendra Nath Banerjee Road, Calcutta.

2. The aforesaid premises being the actual places of residence of your petitioners were and are situated within, the area which formed Calcutta South-West Parliamentary Constituency (hereinafter referred to as the said Constituency) in the last General Election held in March 1957 *inter alia* for the election of Members to the House of People (Lok Sabha) under the Constitution of India and other enactments passed therefor.

3. At all material times your petitioners were electors and were entitled to vote at the said last General Election held in or about March 1957 in the said Constituency and the serial number of your petitioner's in the Electoral Roll for the said Constituency were No. 124 Part 47 (Mahim Halder Street) Kalighat Assembly Constituency, Sector and No. 1269 Part 88 (Surendra Nath Banerjee Road) Chowringhee Assembly Constituency Sector respectively of the Original Electoral Roll prepared by the appropriate authorities for the purpose of the said election in the said Constituency.

4. Your petitioners state that the said last General Election, *inter alia*, for the election of a Member of the House of People (Lok Sabha) from the said Constituency (hereinafter referred to as "the said Election") was held partly on the 4th March, 1957, and partly on 14th March, 1957, for which the respondents were the candidates.

5. On or about March 20, 1957 the results of the said Election were announced after the counting of the votes therefor had been completed by one Sri K. C. Basack who was appointed by the appropriate authorities as the Returning Officer for the said Constituency and the respondent Biren Roy was declared elected as a Member of the said Constituency to the said House of People (Lok Sabha).

6. The results of the said Election were declared as follows:—

Name	Votes Polled
(a) Biren Roy	94,944
(b) Ashim Krishna Dutt	82,406
(c) Rajani Mukherjee	11,297

7. Your petitioners submit and state that the election of the returned candidate was and is void as:—

(a) On the date of his election the returned candidate, Respondent No. 1 was disqualified to be chosen to fill the said seat under the Constitution and/or the Representative of the Peoples Act, 1951.

(b) That corrupt practices had been committed by the returned candidate or his election agent or other persons with the consent of the returned candidate or his election agent.

(c) That the result of the election, in so far as it concerned the returned candidate, has been materially affected by:—

(i) Corrupt practices committed in the interests of returned candidate by persons other than the said candidate or his election agent or persons acting with the consent of the said candidate or election agent,

(ii) Improper acceptance of the nomination,

(iii) By non-compliance with the provisions of the Constitution and/or of the said Act and/or Rules or Orders made thereunder.

Particulars are set out hereunder:—

8. Your petitioners state that the said Election of the respondent Biren Roy to the House of People (Lok Sabha) from the said Calcutta South-West Parliamentary Constituency in the last General Election aforesaid was and is void, *inter alia*, on the following grounds:—

A. The following corrupt practices have been committed by the said Biren Roy or his Election Agent or by other persons with consent of the said Biren Roy or his Election Agent. The results of the Election in so far as it concerns the said Biren Roy had been materially affected by the following corrupt practices committed in the interest of the said Biren Roy by persons other than himself or his Election Agent or by persons acting with the consent of the said Biren Roy or his Election Agent:

(i) The respondent Biren Roy and/or his Election Agent and/or his workers and supporters with the connivance and/or consent of the respondent Biren Roy or his agents or other persons has and/or have procured and/or abetted in procuring and/or attempted to procure applications by divers persons (some of whom were not electors for the said Constituency) for Ballot papers in the names of divers other persons whose names appeared in the Electoral Roll of the said Constituency as electors and who had died before the said 4th March 1957 and 14th March, 1957 and/or were dead on the said dates or in fictitious names. Your petitioners crave leave to furnish particulars on discovery.

(ii) The respondent Biren Roy and/or his Agent and/or his workers and supporters with the connivance and/or consent of the said Biren Roy and/or his Agent and/or other persons has and/or have procured and/or abetted in procuring and/or attempted to procure application by divers persons (some of whom were not electors for the said Constituency) for Ballot papers in the names of divers other living persons whose names appeared in the Electoral Roll of the said Constituency as electors. Your petitioners crave leave to furnish particulars on discovery.

(iii) Your petitioners further state that the said Election has not been a free Election, *inter alia*, because of the undue influence or a direct or indirect interference or attempt to interfere on the part of the said respondent Biren Roy or his Agents or other persons because of the threat held out by the said Biren Roy or other electors or other persons in whom the said Biren Roy or the said electors were interested to the Mohammedan electors at the said Constituency with injury that the said persons would be expelled from the Mohammedan community and/or because of a systematic appeal to the Mohammedan electors by the said respondent Biren Roy or his Agents or by other persons to vote in favour of the said Biren Roy on the grounds of community or religion for furtherance of the prospect of the election of the said Biren Roy, particulars of which are as follows:—

(a) At various meetings held on dates and places mentioned in Annexure "A" hercof, the respondent Biren Roy and/or his agents and/or his workers and supporters and/or persons in whom the said respondent Biren Roy and/or his agents were interested or other persons told the Mohammedan audience at the said meetings, who were all voters or electors at the said Constituency to vote for the said respondent Biren Roy and not to vote for the Congress candidate Ashim Krishna Dutt and the connected Congress Assembly candidates on the ground that if Congress would come into power the Pakistanis would be driven out from Kashmere and that unless they voted for Biren Roy who was supported by the Communists and other leftist candidates the future of the said Mohammedan voters would be very dark and would be completely guided by the whims of the Congress and they were further told that if the Communist and other leftist candidates came into power, one Mohammed Ismail who was contesting the West Bengal Chief Minister in the West Bengal Assembly Election would be the Chief Minister of West Bengal and the State of West Bengal would become a part of Pakistan.

(b) By reason of the aforesaid utterances at the said meetings held by the said respondent Biren Roy and others as aforesaid, almost all the Mohammedan voters had voted against the Congress candidate and for the respondent Biren Roy who was as hereinbefore stated supported by the Communists, P.S.P. and other leftist political parties.

(iv) The said Biren Roy or other person or persons caused certain publications to be made in the paper "Swadhinata" which was at the relevant date was an official Communist Party Daily Newspaper and/or a Communist controlled Daily Newspaper in Calcutta of certain statements of facts which are false and which the persons publishing the same believed to be false or did not believe to be true in relation to the personal character or conduct of the Congress candidate being the respondent Ashim Krishna Dutt, and such statements were reasonably calculated to prejudice and did prejudice the prospects of the said Congress candidate Ashim Krishna Dutt. Particulars of such publications are as follows. Your petitioners will refer to the said publications at the time of the hearing.

"Swadhinata" dated Calcutta, 13th March 1957—Page 2, under caption *Swanamdhanya Ashim Datter Itihas*.

(v) The respondent Biren Roy or his agents or other persons acting for him or for his benefit hired or procured whether on payment or otherwise vehicles including motor cars, lorries, cycle rickshaws for the conveyance of the electors (other than the said Biren Roy or members of his family or his agent) to and from the Polling Stations fixed for the purpose of polling on the following dates.

B. Your petitioners further state that at all material times the respondent Biren Roy had by himself or by person or persons or body of persons in trust for him or for his benefit or on his account a share or interest in contracts for the supply of goods to or for the execution of certain works or for the performance of services undertaken by the Government of India or the appropriate Government, particulars of which are as follows:—

Particulars.

- (a) In or about 1950 the respondent Biren Roy started a business under the name and style of Indo-German Trade & Economic Information Centre as the sole proprietor and/or partner thereof. Sometime thereafter the name and style of the said business was changed into Indo-German Trade Centre. In any event at all material times the respondent Biren Roy had an interest or share in the said business carried on under the name and style of Indo-German Trade & Economic Information Centre and later on under the name and style of Indo-German Trade Centre and the said respondent Biren Roy acted as the Director of the said business. Your petitioners further state that if and in so far it may appear that other persons purported to act and/or purported to be interested in the said business such persons were mere benamanders or trustees or name-lenders for the respondent Biren Roy.
- (b) At all material times the said business carried on under the name and style of Indo-German Trade Centre used to carry on business *inter alia* of supplying, fixing and maintaining Automatic Vote Recording System including its parts and other materials.
- (c) In the beginning of the year 1957 the Government of India and/or the appropriate Government entered into a contract with the said business carried on under the name and style of Indo-German Trade Centre for supply of Automatic Vote Recording System to the House of People (Lok Sabha) and to the Council of State (Rajya Sabha). Full particulars of the said Contract will appear from the contract papers including the tender and the relative acceptance of tender lying with the appropriate department of the Government of India, Secretariat, New Delhi, to which your petitioners will refer when produced.
- (d) At all material times the respondent Biren Roy was the owner and/or trustee of a house and premises No. 3, Sourin Roy Road, Behala and the respondent Biren Roy in his business name of B. K. Mukherjee and/or in the benami name of one B. K. Mukherjee who is the brother-in-law (wife's brother) of the said respondent Biren Roy entered into a contract of lease with the Post-Master General, Calcutta and/or the Government of India and/or the appropriate Government and the said Contract of lease was valid and in existence on the date of the said General Election and prior thereto and at all material times.
- (e) In the premises your petitioners state that the respondent Biren Roy was on the date of the last General Election disqualified to be chosen to fill the Seat or for being a Member of the House of People (Lok Sabha).

C. The Polling Booths in the said Constituency the numbers whereof are set out hereinafter were not opened at 8 A.M. and in some cases Parliamentary Ballot Papers were not issued at the beginning but only Assembly Ballot Papers were issued as a result whereof numerous voters who had come to vote for the respondent Ashim Krishna Dutt had to go back without casting their respective votes. Further, although the said Polling Booths were opened at a time later than that advertised for the information of the public they were not kept opened for a period after the announced closing time as a result whereof numerous voters who had come to cast their respective votes could not find it convenient to vote at all and did not in fact vote and thereby the result of the said election was materially affected.

List of Booths and time when opened

	Location of Polling Station	Number of Booth	When polling started
1	St. Xaviers Col. School, 30, Park Street	145	8-25 A.M.
		3	
2	Do.	145	8-25 A.M.
		6	
3	Boltan Day School, 28 & 29, Ripon Street	145	8-30 A.M.
		16	
4	Do.	145	8-30 A.M.
		17	
5	Technical Trading School, S.N. Banerjee Road	145	8-40 A.M.
		46	
6	Do.	145	8-40 A.M.
		47	
7	Central Municipal Office, 5, S.N. Banerjee Road	145	8-30 A.M.
		56	
8	Do.	145	8-25 A.M.
		57	
9	St. Terasa's H. E. School, 72, Diamond Harbour Rd.	151	8-15 A.M.
		5	
10	Do.	151	8-15 A.M.
		6	
11	Do.	151	8-15 A.M.
		7	
12	Milani H. E. School, 8/1, Braunfeld Row	151	8-30 A.M.
		19	
13	Do.	151	8-30 A.M.
		20	
14	C. F. P. School, 52, Braunfeld Row	151	8-45 A.M.
		28	
15	C. F. P. School, 86, Pipe Road	151	8-45 A.M.
		41	
16	C. F. P. School, 19/1, Mansatala Lane	151	8-15 A.M.
		43	
17	St. Thomas H. E. School, 4, Diamond Harbour Rd.	151	8-20 A.M.
		57	
18	Do.	151	8-20 A.M.
		59	
19	St. Paul's H. E. School, 68, Diamond Harbour Rd.	151	8-30 A.M.
		66	

	Location of Polling Station	Number of Booth	When pol- ling started
20	St. Paul's H. E. School, 68, Diamond Harbour Rd.	151 67 152	8-30 A.M.
21	Sussex Trust Model School, 16, Mohan Chand Road	13 152	8-20 A.M.
22	A. P. Vidyalaya, Nimak Mahal Road	46 152	9-0 A.M.
23	Do.	47 152	8-45 A.M.
24	Do.	48 152	8-45 A.M.
25	Do.	54 152	8-45 A.M.
26	Do.	55 154	8-45 A.M.
27	Islamia Moktab at Dhan Kheti	3 154	8-15 A.M.
28	Satghara M. F. P. School, Dr. A. Kabir Road	57 154	9-0 A.M.
29	Do.	58 154	9-0 A.M.
30	Union Jute Co.'s Office	61 154	8-30 A.M.
31	Do.	62 154	8-30 A.M.
32	Do.	63 154	8-45 A.M.
33	Do.	64 154	8-45 A.M.
34	Badartola Girl's School, Mistrighat Road	70 155	9-0 A.M.
35	Behala High School, Banamali Naskar Road	1 155	8-15 A.M.
36	Harisava, Banamali Naskar Road	4 155	8-45 A.M.
37	Do.	5 155	8-30 A.M.
38	Do.	6 155	8-30 A.M.
39	Polar Electrical Fan Marketing Co., Brahmosamaj Road and Goalapara Road Junction.	13 155	8-30 A.M.
40	Sikshabhavan, Becharam Chatterjee Road	15 155	8-45 A.M.
41	P.N.M. Brick Field Office, B. L. Saha Road	20 155	8-30 A.M.
42	Do.	21 155	8-45 A.M.

	Location of Polling Station	Number of Booth	When polling started
43	Chanditala Mandir, Chanditala Main Road	155 24 155	9-0 A.M.
44	Do.	25 155	9-0 A.M.
45	Rice Mill of Mahadeo Marwari, Bura Sibatala Main Road	27 155	8-30 A.M.
46	Rice Mill of Ram Gopal Mahadeo, Bura Sibatala Main Road	30 155	8-30 A.M.
47	Do.	31 155	8-30 A.M.
48	Thakurpukur Elizabeth Girls' School, Diamond Harbour Road.	45 155	8-25 A.M.
49	Brick Field Office of Bijoy Madhav Paul, Matilal Gupta Road	57	8-15 A.M.

D. The respondent Biren Roy and/or his agents further has and/or have incurred and/or authorised expenditure and/or employed persons in contravention of Act XLIII of 1951 and/or the rules made thereunder. The Election Accounts filed by the respondent Biren Roy are incorrect and not true and are not in conformity with Act XLIII of 1951. Your petitioners crave leave to give fuller and better particulars in respect of the statements made hereinabove at a later date or at the time of the hearing of this petition.

9. If necessary, your petitioners will furnish further details and give better particulars in respect of the statements made in the various paragraphs hereinabove after discovery and inspection or if required at the time of hearing.

10. In the aforesaid facts and circumstances your petitioners state that the election of the respondent Biren Roy should be declared void and/or the said entire Election be declared to be wholly void.

11. Your petitioners have deposited a sum of Rupees 1000 with the Reserve Bank of India in favour of the Election Commission as security for the costs of this petition and the said Reserve Bank of India Receipt of the said deposit is annexed hereto and marked with the letter "B".

Your petitioners, therefore, pray:—

- That it may be declared that the Election of the respondent Biren Roy in the last General Election held in March 1957 from Calcutta South-West Parliamentary Constituency to the House of People (Lok Sabha) is void;
- If necessary, it may be declared that the said Election is wholly void;
- That costs of and incidental to the petition be awarded against the said Respondent,
- Such other order and directions be given as to the Election Commission seems fit and proper.

And your petitioners as in duty bound shall ever pray.

(Sd.) KALI PADA BANERJEE

(Sd.) ANIL KUMAR SADHU KHAN.

We, Kalkpade Banerjee and Anil Kumar Sadhukhan the petitioners above named do declare that the statements contained in paragraphs 1, 2, 3, 4, 5, 6, 8A (including the sub-paragraphs (i), (ii), (iii) (a), (b), (iv), (v), 8B (including the sub-paragraphs (a), (b), (c), (d), (e), 8C, 8D and 11 of the foregoing petition are true to our knowledge and those contained in paragraphs, 7, 9 and 10 thereof are our submissions.

We sign this verification at No. 30, Surendra Nath Banerjee Road, Calcutta, this 1st day of May, 1957.

(Sd.) KALI PADA BANERJI.

(Sd.) ANIL KUMAR SADHU KHAN.

ANNEXURE "A"

[Referred to in paragraph 8A sub-paragraph (iii) (a)]

List of meetings with date, place and time

No.	Date and time	Place	Speaker
1	16-2-57 at 4 P.M.	Triangular Park at the corner of Wellesley Street and Ripon Street.	Saifuddin Kashmiri, Mohammad Ismail, Biswanath Mukherjee, Nalini Guha, Hazi Mohammad Arif, Biren Roy and others.
2	16-2-57 at 5 P.M.	Molla Para, Dakhin Behala	Janab Malek, Biswanath Chakravarti, Rabin Mukherji, Biren Roy and others.
3	24-2-57 at 6 P.M.	Ground in front of Halders House, Badartala, Garden Reach.	Biren Roy, S. A. Farouqui, Mohammad Elias, Mohammad Ismail, Kamalapati Roy and others.
4	28-2-57 at 5 P.M.	Mudiali, Kabardanga Area, Garden Reach.	Jyoti Basu, Mohit Maitra, Sitaram Singh, S. A. Farouqui, Biren Roy & others.
5	5-3-57 at 6 P.M.	Ekbalpur.	Monikuntala Sen, Dr. Naresh Banerjee, Sitaram Singh, Biren Roy & others.
6	6-3-57 at 6 P.M.	35, Collin Street, Chowringhee.	Abdul Hamid, M. A. Sayeed Md. Ismail, Saroj Mukherji, Haji Md. Ariff, Biren Roy and others.
7	9-3-57 at 7 P.M.	Mullick Bazar, Lower Circular Road, Chowringhee.	Mansur Habib, Sona Mea, Mohini Banerjee, Hazi Md. Ariff, Biren Roy & others.

We, Kalipada Banerjee and Anil Kumar Sadhukhan the petitioners above named do declare that the statements contained in the above list referred to as Annexure "A" in paragraph 8A sub-paragraph (iii) (a) of the foregoing petition are based on information believed by us to be true.

We sign this verification at No. 30, Surendra Nath Banerjee Road, Calcutta, this 1st day of May 1957.

(Sd.) KALI PADA BANERJI.

(Sd.) ANIL KUMAR SADHU KHAN.

[No. 82/439/57.]

DIN DAYAL, Under Secy.

ERRATUM

The S. R. O. No. of the notification No. WJ/II/1/56, dated the 23rd May 1957 of the Ministry of Labour and Employment, published in the Gazette of India Extraordinary, Part II—Sec. 3 (Issue No. 271-B), dated the 27th May 1957, should be "1737-C" instead of "1737".